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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

APR 12 1996

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OFFICE OF SECRETARY  
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In the Matter of

Federal-State Joint Board  
on Universal Service

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CC Docket No. 96-45

To: The Federal-State Joint Board

**COMMENTS OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

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April 12, 1996

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## SUMMARY

Universal service has long been pursued by federal and state regulators, but always through policies which presupposed a monopoly provider of local telephone services. The Telecommunications Act of 1996 establishes the framework through which that monopoly might yield to meaningful competition in all telecommunications services, thereby ending the underpinnings of previous universal service policies. Accordingly, this Joint Board is established to thoroughly review existing universal service mechanisms and create new policies that will further universal service in a competitive environment.

The Joint Board must recommend universal service policies that satisfy four basic principles. First, it must define a specific set of services that will be eligible for support. In doing so, the Board should include those services that are necessary for a subscriber to obtain functional access to the public switched network, employing those features which are so ubiquitous as to have become standard features and allowing subscribers to add on to these services to obtain more advanced services they may find attractive.

Second, the Board should differentiate between support designed to promote service to rural/high cost areas and support intended to benefit low-income subscribers. Both of these kinds of support advance the goals of universal service, but rural support targets geographic regions and specific services, while low-income support targets specific subscribers, regardless of their location. By separately assessing the need for each type of support, and establishing separate support programs, the Joint Board can promote each goal as efficiently as possible.

Third, the 1996 Act mandates that all universal service programs be explicit. The Board must recommend "specific, predictable, and sufficient" mechanisms to advance clearly

defined universal service goals. In developing explicit support mechanisms, the Board must also ensure that existing implicit support and cross subsidies are eliminated.

Finally, the Board must recommend universal service support mechanisms that are fair to all telecommunications providers and will not distort competition among providers in any way. This requires that any funds necessary to support universal service be collected from all telecommunications providers on equal and nondiscriminatory terms. It also requires that support be distributed to telecommunications providers on an equitable basis as well.

Applying these principles to the proposals made in the *Notice of Proposed Rulemaking*, CompTel supports the *Notice's* proposed definition of the services comprising universal service. These core services provide functional access to the network, and do not include optional services not needed for most telecommunications needs. This definition of supported services should be used for determining both rural support and low-income support mechanisms.

CompTel recommends that the Board designate rural subsidies only in those areas where end user rates exceed the average rates charged in a representative sample of large cities. Currently, many rural areas receive service at rates 20 percent or more below comparable urban rates. Furthermore, support necessary to provide these subsidies should be collected from all providers via a surcharge on net revenues, and eligibility to receive support payments should be available to all retail providers of the subsidized services.

Low-income support should be provided solely through the Commission's Lifeline and Link-Up programs. However, these programs must be supported by all telecommunications providers, not solely interexchange carriers, as is the case today. Support should be collected via a surcharge on carrier net revenues.

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits these comments regarding the Federal Communications Commission's ("FCC's") universal service policies.<sup>1</sup> As the principal industry association of competitive telecommunications providers, with approximately 175 members offering a full variety of telecommunications services, CompTel is committed to the goal of ensuring all Americans have the opportunity to obtain quality telecommunications services at reasonable prices. For the reasons explained below, the Joint Board should critically examine all claimed universal service support mechanisms to develop clearly defined federal-state universal service goals. These goals should be supported by explicit mechanisms to collect and distribute needed funds in a competitively neutral manner.

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<sup>1</sup> See *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 96-93 (rel. Mar. 8, 1996) (hereinafter "*Notice*").

## I. INTRODUCTION

The Joint Board's task is an important one. Recognizing that the primary goal of the Telecommunications Act of 1996 ("1996 Act") is to bring effective competition to local exchange services, the Joint Board must redefine universal service for a competitive era. Congress intends that the Board will "thoroughly review the existing universal service system, including any definitions used by the different states and in particular both federal and state support mechanisms."<sup>2</sup> In this review, the Board should not automatically accept any existing mechanism alleged to support universal service, nor should it accept the premise that existing levels of support are needed now, or will be needed when meaningful local services competition develops. The Board must scrutinize all regulatory and carrier policies currently attributed to universal service to determine whether they are necessary and consistent with the 1996 Act.

Ever since Theodore Vail's mantra of "One Policy, One System, Universal Service," federal and state universal service policies have been intertwined with the concept of a monopoly provider of local services. In the era between the Great Depression and the 1970's, regulators pursued the primary goal, frequently characterized as "universal service," of broadening the reach of the nationwide telephone system.<sup>3</sup> This goal was pursued through artificially low local telephone rates, which, in turn, were supported by a complex series of frequently unspecified and mostly implicit cross-subsidies from other

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<sup>2</sup> Report of the Committee on Commerce, Science, and Transportation on S. 652, S. Rep. No. 104-23, 104th Cong., 1st Sess. 25 (1995) ("*Senate Report*"); H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 80 (1995) ("*House Report*") (The Joint Board "should evaluate universal service in the context of a local market changing from one characterized by monopoly to one of competition"); *see also* Joint Explanatory Statement of the Committee on Conference, at 16 ("*Joint Explanatory Statement*").

<sup>3</sup> *See, e.g.,* Kellogg, Thorne & Huber, *Federal Telecommunications Law* 21 (1992).

telecommunications services. All of this was possible because a single monopoly provider offered both the services priced artificially high and those allegedly receiving subsidies.

The 1996 Act requires a reassessment of these prior universal service policies. Old assumptions cannot be accepted uncritically "in the context of a local market changing from one characterized by monopoly to one of competition."<sup>4</sup> Whereas past policies allowed implicit cross-subsidies (funded predominantly by IXC's and their customers), the 1996 Act mandates that support mechanisms be "specific, predictable and sufficient" and that all telecommunications providers bear the burden of universal service support on an "equitable and nondiscriminatory" basis.<sup>5</sup> To fulfill its obligations under the 1996 Act, the Joint Board must define what services should be available to all, and the extent to which, if at all, such services need to be subsidized. It also must develop a new system of collecting any support funds and distributing them to service providers. All the while, the Joint Board must be careful not to distort competition by inequitably burdening one segment of the telecommunications market with support obligations or by favoring one class of market participants with support payments. Universal service policies should facilitate Congress' primary goal, which is to encourage the development of meaningful competition in local telephone services.

Section II of the comments below discusses the principles that should be followed in developing universal service policies consistent with the 1996 Act. Section III discusses the

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<sup>4</sup> *House Report*, at 80. The need for a fresh look at universal service goals, without preconceptions created by previous assumptions, is highlighted by Congress' conclusion that Docket 80-286 was not an appropriate foundation for this review. *Joint Explanatory Statement*, at 17.

<sup>5</sup> 47 U.S.C. § 254(b)(4)-(5). For clarity, provisions of the 1996 Act are cited to the sections at which they will be codified.

Act's division of universal service responsibility between federal and state regulators. Then, in Sections IV and V, CompTel applies these principles to the *Notice's* proposals to promote the availability of telecommunications services to rural and high cost areas, and, separately, to provide support for low-income users.

## **II. UNIVERSAL SERVICE POLICIES MUST BE EXPLICIT, TARGETED TOWARD SPECIFICALLY IDENTIFIED GOALS, AND ADMINISTERED IN A COMPETITIVELY NEUTRAL MANNER**

As in many other telecommunications contexts, the 1996 Act establishes a new paradigm for universal service. No longer are a monopolists' general subsidies appropriate to achieve universal service goals. In an environment of multiple local service providers, programs intended to promote universal service must clearly identify what service is worthy of support and must provide that support without distorting competition in telecommunications markets.

### **A. "Universal Service" Should be Defined as a Specific Set of Services Sufficient to Give a Subscriber Functional Access to the Network**

Surprisingly, little effort was made in the past to define what regulators intended to promote in the name of universal service. The 1996 Act, however, requires the Joint Board (and the FCC) to address this basic question. The Act provides specific criteria that any service must meet before it can be included in the definition of universal service. Any proposed service must: (1) be essential to education, public health or public safety, (2) be subscribed to by a "substantial majority of residential customers," (3) be deployed throughout



public telecommunications networks, and (4) be consistent with the public interest, convenience and necessity.<sup>6</sup>

The critical function of universal service is to enable all Americans to obtain functional access to the public switched network. Functional access includes basic interconnection to the network (including equal access and presubscription) and all services *essential* to educational, public health, or public safety concerns. Functional access also includes those core elements that are ubiquitously relied upon as building blocks for advanced features. By requiring that services be "subscribed to by a *substantial majority* of residential customers" and be "deployed in public telecommunications networks,"<sup>7</sup> Congress clearly intended universal service to include only those that are so ingrained as to be "standard" for any telecommunications service. In other words, Congress intended that the services eligible for universal service support provide the basic features necessary for functional use of the network.<sup>8</sup>

Consequently, the core group of services should be sufficient not only to place and receive ordinary POTS calls, but also to enable subscribers to add more advanced services, or to use the core services in conjunction with customer supplied equipment to perform more advanced functions. Ensuring that the "standard" features provide this capability fulfills the

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<sup>6</sup> 47 U.S.C. § 254(c)(1) (emphasis added).

<sup>7</sup> *See id.*, § 254(c)(1)(B)-(C).

<sup>8</sup> Furthermore, universal service is to be an evolving standard. *Id.*, § 254(c). Thus, as additional services become sufficiently ingrained in the average customer's standard package, they should be added to the definition of services eligible for universal service support.

statute's mandate that customers receive *access* to advanced services.<sup>9</sup> As the *Senate Report* explained,

[T]he Committee intends the definition of universal service to ensure that the conduit, whether it is a twisted pair wire [or other technology], has sufficient capacity and technological capability to enable consumers to use whatever consumer goods that they have purchased, such as a telephone, personal computer, video player, or television, to interconnect to services that are available over the telecommunications network.<sup>10</sup>

Although some parties may urge the Board to include one or more advanced services — as opposed to *access* to those services — in the definition of universal service, the Board should not do so. Universal service is a subsidy to ensure a minimum set of services are available to all Americans. The costs of such a subsidy skyrocket, however, if the definition is expanded to include optional services which, while they may be attractive to some customers, are not necessary for most uses of the public switched telephone network. Instead, universal service policies should ensure that the baseline services are sufficient for consumers to obtain access, if they desire it, to advanced or optional services.

The *Notice's* proposed list of core services satisfies the above standards for universal service.<sup>11</sup> These core services provide the essential functional capabilities of the public network, including allowing subscribers to place and receive calls, to reach emergency authorities, and to interact with advanced features available from businesses and information providers. CompTel agrees that these services are those that should define the scope of

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<sup>9</sup> *Id.*, § 254(b)(2).

<sup>10</sup> *Senate Report* at 27.

<sup>11</sup> *See Notice*, ¶ 16. The Board should clarify that voice grade access includes equal access and presubscription to telecommunications carriers of choice.

universal service and provide the framework for determining universal service support mechanisms.

**B. The Amount Needed to Support Rural/High Cost Areas Should Be Determined Separately from the Amount Devoted to Support for Low-Income Customers**

The second step, after determining what services to support, is to determine the amount needed to support those services. This amount necessarily will rise or fall as the scope of universal service is broadened or contracted. It is important, therefore, to consider the primary purposes advanced by universal service policies. Universal service traditionally has had two purposes: (1) to promote the extension of the network to rural and high cost areas and (2) to make service affordable for low-income customers. The 1996 Act explicitly includes these two purposes in future universal service policies.<sup>12</sup>

While both purposes advance "universal service," each requires different mechanisms to achieve its ends. Access in rural and high cost areas reflects a policy judgment that telephone service should be available to all areas, whether urban or rural. Its goal is to ensure geographic ubiquity in telephone services, and is implemented by creating incentives for carriers to serve rural areas. Programs to advance this goal should provide subsidies (but only to the extent they are necessary) directly to the carriers that serve customers within subsidized regions.

Support for low income customers, by contrast, is an overlay to the goal of geographic ubiquity. Its goal is to ensure that as many people as possible within a given geographic area are able to choose whether or not to obtain telephone service. Low income support targets

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<sup>12</sup> 47 U.S.C. § 254(b)(3).

individuals, not services or regions, to provide assistance directly to those who want to obtain telephone services but cannot afford them.

These differing purposes require the Joint Board to assess separately the need for, and the support mechanisms designed to further, rural and low-income subsidies. Both goals begin with the same set of defined services, but require different programs to advance their objectives. Geographic ubiquity should be established first, through mechanisms that ensure all areas of the country receive functional access to the network. Then, low-income support should be considered to make those services affordable to targeted customers.

### **C. Support for Universal Services Should Be Explicit**

Another way the 1996 Act departs from prior practice is its requirement that universal service support mechanisms be explicit. While universal service previously relied on cross subsidies contained in a monopoly provider's revenue requirements, Section 254(b) requires the Joint Board to develop "specific, predictable, and sufficient" support mechanisms for the future.<sup>13</sup> Congress explained that this provision requires "any support mechanisms continued or created under new section 254 [to be] explicit, rather than implicit as many support mechanisms are today."<sup>14</sup> Thus, the era of cross-subsidies by incumbent LECs (like the era of big government) is over.

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<sup>13</sup> 47 U.S.C. § 254(b)(5); *see also, id.*, § 254(e) (requiring support given to service providers to be explicit).

<sup>14</sup> *Joint Explanatory Statement*, at 17.

#### **D. Universal Service Support Must Not Favor or Disfavor Any One Class of Telecommunications Providers**

Section 254 also requires that universal service support mechanisms be competitively neutral. Contributions made to support universal service must be collected from all providers of telecommunications services, including incumbent LECs, and the manner in which they are collected must be "equitable and nondiscriminatory."<sup>15</sup> Thus, mechanisms to collect support funds must be technology and service neutral. They cannot rely disproportionately on any particular class of services (or service providers) to pay for universal services. The obligation to support universal service (however it is defined) must be spread equitably among all who use and benefit from the public switched telephone network.

In addition, competitive neutrality requires that all telecommunications providers have an equal chance to provide the services defined as universal service and to receive support for doing so. As the FCC's Universal Service Task Force noted, "Assistance programs that provide subsidies to incumbent service providers while denying assistance to new entrants may impede the development of competition."<sup>16</sup> Universal service must further the broader goal of facilitating local services competition throughout the nation. Competition drives carriers to develop innovative services, to expand to new areas, to provide better value, and to serve previously underserved areas. In short, competition is the best policy to preserve and advance universal service, and the Joint Board must devise a support mechanism that will not distort the potential for competition in local telephone services.

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<sup>15</sup> 47 U.S.C. § 254(b)(4).

<sup>16</sup> FCC, Universal Service Task Force, *Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms*, at 30 (Feb. 23, 1996) ("*Addressing Universal Service Issues*").

### **III. UNIVERSAL SERVICE IS AN IMPORTANT FEDERAL POLICY WHICH THE FCC AND THE STATES MUST IMPLEMENT CONSISTENTLY**

Section 254 outlines goals for federal universal support mechanisms. In so doing, it makes explicit that universal service is an important federal policy. Prior to the Act, the FCC pursued universality as part of its goal of ensuring the availability of a "rapid, efficient, Nation-wide, and world-wide wire and radio communications service."<sup>17</sup> By making universal service an explicit goal, Congress intended not only to clarify the federal role but also to foster greater consistency between federal and state universal service policies.<sup>18</sup>

This consistency is achieved primarily by having the FCC, with the input of this Joint Board, develop "policies for the preservation and advancement of universal service" on a national basis.<sup>19</sup> The Board is deliberately composed of a cross section of state and federal interests, in order to draw upon the experience of all entities responsible for preserving and advancing universal service. Thus, states have an institutionally preserved role in influencing national universal service policies.

With the assistance of the Joint Board, the FCC must establish policies which define the scope of universal service and ensure it is supported in a competitively neutral manner. To do so, the Commission should define which services will be included in universal service support. It also must identify the amount of support (in "specific, predictable and sufficient" terms) needed to preserve and advance that level of service, taking into account the effect competition will have on universal service needs. Then the Commission must specify the

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<sup>17</sup> 47 U.S.C. § 151.

<sup>18</sup> *See Senate Report* at 25 (emphasizing need for consistency between federal and state actions).

<sup>19</sup> 47 U.S.C. § 254(b).

mechanism for collecting and distributing this support. This mechanism should apply to all interstate telecommunications providers through a single support mechanism. Development of a single support mechanism will ensure that universal service policies are consistent with the policy of promoting the development of local competition. A system of differing mechanisms applied to interstate and intrastate services of an interstate carrier could have an unequal effect on new local service providers, thereby making it more difficult for meaningful competition to develop. The Board, therefore, should recommend a single system which will collect all the funds needed to support the federal universal service policy.<sup>20</sup>

Under Section 254(f) a state may apply its own mechanism to purely intrastate providers or to preserve and advance services in addition to those identified by the FCC. However, any such state mechanism must remain consistent with the federal universal service system.<sup>21</sup> Any state-mandated contribution system — like the system mandated by Section 254(b) — must be "equitable and nondiscriminatory."<sup>22</sup> Moreover, if a state chooses to support a broader definition of universal service than supported by the federal program, it must do so through an entirely separate mechanism, which does not "rely on or burden" the mechanism

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<sup>20</sup> A uniform system also makes it easier for the FCC to ensure that universal service support is "sufficient" to achieve its purposes.

<sup>21</sup> 47 U.S.C. § 254(f). Section 254(f) allows states to determine the manner in which *intrastate providers* contribute to universal service, but that grant is circumscribed by the obligation that any such regulations "not be inconsistent" with the federal system.

<sup>22</sup> *Id.* Clearly, a state may not disproportionately burden one class of telecommunications providers (such as through interexchange access charges) or develop a system that is not competitively neutral.

established by the FCC.<sup>23</sup> The state may not divert funds, for example, collected for federal universal service purposes to fulfill these additional state choices.

Finally, the Act requires the FCC to establish the criteria states should apply to designate "eligible telecommunications carriers" under new Section 214(e).<sup>24</sup> Only carriers meeting Section 214(e)'s eligibility requirements may receive universal service support.<sup>25</sup> Therefore, designation by the states is crucial to the ability of telecommunications providers to participate in federal universal service support mechanisms. The Commission should ensure states exercise this power consistent with federal policies by specifying the criteria the states are to apply in designating eligible telecommunications carriers.

#### **IV. MECHANISMS DESIGNED TO SUPPORT UNIVERSAL SERVICE TO RURAL AND HIGH COST AREAS**

##### **A. What Services to Support**

The *Notice* proposes to define universal service to include (1) voice grade access to the public switched network, (2) touch-tone lines, (3) single party service, (4) access to emergency services (911), and (5) access to operator services.<sup>26</sup>

CompTel agrees that these services should define the scope of universal service.<sup>27</sup> With these services, a rural customer has full functional access to the public switched

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<sup>23</sup> *Id.*

<sup>24</sup> *See, id.*, § 254(a)(1) (Joint Board shall recommend changes "to implement Sections 214(e) and this Section").

<sup>25</sup> *Id.*, § 254(e).

<sup>26</sup> *Notice*, ¶ 16.

<sup>27</sup> "Voice grade access" includes equal access to telecommunications carriers and the ability to presubscribe to preferred telecommunications carriers.



network. In addition, these services are sufficient to allow the customer to add additional services to obtain access to advanced network services.

**B. When Support Is Needed and How to Determine How Much Support Is Necessary**

The *Notice* requests comment on how to determine when a rural or "high cost" area is in need of support.<sup>28</sup> It asks whether the Commission should set a particular dollar level at which the universal services should be priced and, if so, how to determine at what level this should be.

In answering this question it is important to note first that, because of the existing system of implicit universal service cross-subsidies, it cannot be presumed that rural services currently are at an appropriate price. Many rural cities have basic telephone rates substantially below those of "low-cost" urban cities. For example, a 1994 FCC study found that in Bell Atlantic territory, single line, residential, touch-tone service was priced at an average of \$21.90 per month in Washington, D.C., and \$24.88 per month in Baltimore, MD, but only \$14.73 per month in rural Ellwood City, PA (pop. 9,900).<sup>29</sup> Similarly, U S West charged \$21.55 per month in Minneapolis, MN and \$20.90 in Denver, CO, but only \$15.85 in Logan, UT (pop. 26,800) and \$18.22 in Butte, MT (pop. 37,200).<sup>30</sup> Even within a single state, service in less populated cities can be priced significantly lower than in densely populated areas. For example, NYNEX charged \$32.69 in Buffalo, NY and \$26.77

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<sup>28</sup> *Id.* ¶ 25.

<sup>29</sup> FCC, Industry Analysis Division, *Reference Book: Rates, Price Indexes, and Household Expenditures for Telephone Service*, at 99-100 (July 1994) (reporting October 1993 rates).

<sup>30</sup> *Id.*

in New York City, but only \$22.89 in Massena, NY (pop. 12,800).<sup>31</sup> Indeed, the rates charged in all of the above urban areas exceeded each RBOC's average price for residential touch-tone service.<sup>32</sup>

Obviously, many rural areas already are receiving local services at rates better than rates charged in urban areas. These areas should not receive universal support subsidies to maintain such prices. Instead, regulators should expect and allow these rural rates to increase to the point where they become comparable to the rates paid by urban subscribers.<sup>33</sup> Accordingly, if a given rural area's average rates are at or below the average of the incumbent LEC's standard charges in a representative sample of large cities, then no universal service support should be provided to that area.

Similarly, the level of support necessary to achieve universal service goals should be the difference between the reasonable cost to an "average" telecommunications provider using currently accepted technologies and the rate at which rural service is reasonably comparable

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 112 (showing average prices, including touch-tone charges, of \$19.03 for Bell Atlantic, \$23.35 for NYNEX, and \$17.87 for U S West).

<sup>33</sup> There is considerable evidence that a rise in basic rates, if accompanied by a reduction in interexchange carrier costs, will lead to *lower* total bills for most subscribers and will not have a detrimental effect on telephone subscribers. See *Addressing Universal Service Issues*, at 94 (increasing the SLC did not affect telephone penetration levels); Parsons, *The Economic Necessity of an Increased Subscriber Line Charge (SLC) in Telecommunications*, 48 Admin. L. Rev. 227, 240-43 (1996) ("*Economic Necessity*") (increasing the SLC will lower total monthly bills); Kaserman & Mayo, *Cross-Subsidies in Telecommunications: Roadblocks on the Road to More Intelligent Telephone Pricing*, 11 Yale J. on Reg. 119, 141 (1994) (increase in local service flat rate and a decrease in long distance charges could increase subscribership).

to urban service.<sup>34</sup> Rural services should pay no more, and no less, than customers of comparable urban services do.

### **C. How to Collect Funds to Provide Support**

As explained in Section II above, universal service support must be collected in a competitively neutral manner. Therefore, *all* telecommunications providers — including LECs, IXC's, CAPs, CMRS providers, paging providers, and PCS providers<sup>35</sup> — must contribute to the cost of providing service to rural and high cost areas. Moreover, the collection mechanism cannot rely on charges which disproportionately affect one segment of the industry.

The most equitable way to collect universal service funds without unreasonably burdening any class of providers is to collect contributions through a Universal Service Surcharge ("USS") assessed on telecommunications provider revenues, net of payments made to other carriers. This could be accomplished either through a tax assessed on end user retail revenues or by permitting providers to deduct from their gross revenues all payments to other carriers, including payments for access, network capacity, and other facilities.<sup>36</sup> If such a charge is implemented, carrier-to-carrier surcharges, such as any Carrier Common Line Charge or a Residual Interconnection Charge, should be eliminated.

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<sup>34</sup> In determining these costs, a provider's forward-looking costs should be used, not embedded costs. *See Notice*, ¶ 32.

<sup>35</sup> These historic regulatory distinctions are rapidly becoming obsolete as telecommunications providers increasingly are offering integrated combinations of previously separate services. Recognizing this, the 1996 Act requires contributions from *all* providers, regardless of their historical classification.

<sup>36</sup> Alternatively, contributions could be collected from end users directly, through a subscriber surcharge on entrance facilities used to connect to the network.

#### **D. Who is Eligible to Receive Support Funds**

As with collection of support, the distribution of universal service funds must be equitable and nondiscriminatory. The guiding principle for this distribution should be that universal service support should flow to the retail provider of the subsidized services to an eligible customer.

First, the conditions for carriers to be classified as "eligible telecommunications carriers" under the Act must be implemented in a neutral manner. Section 214(e) defines an eligible telecommunications carrier as one that, *inter alia*, offers services defined as universal service "using its own facilities or a combination of its own facilities and the resale of another carrier's services."<sup>37</sup> Importantly, "facilities" for these purposes should include any unbundled network elements obtained by a provider pursuant to Section 251(c)(3) and any network transmission capacity obtained on a leased basis. Such a standard would give all retail providers an equal chance to participate in universal service support mechanisms. It also would further the development of local services competition by not favoring any particular class of retail providers with support payments.

Second, support should be made available equally to all eligible telecommunications carriers designated for the geographic regions determined to be rural or high cost areas in need of support. Any service provider offering retail services in that area should receive universal service support for each customer it serves.

Third, in order to ensure neutrality among service providers, universal service support payments should be made on a per-subscriber basis to each eligible telecommunications

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<sup>37</sup> 47 U.S.C. § 214(e)(1)(A).

carrier. Support payments should not vary based upon the carrier's actual costs of serving the customer.

## **V. MECHANISMS DESIGNED TO SUPPORT UNIVERSAL SERVICE FOR LOW-INCOME CUSTOMERS**

### **A. What Services to Support**

As emphasized in Section II, the goal of low-income support is to assist individuals who want to obtain generally available services, but who cannot afford to do so. Programs to provide this assistance necessarily presume a baseline of functional network services that are available within a region, and provide support intended to bring these services within their reach. For this reason, CompTel agrees that the services subsidized for low income customers should be the same as those defined for purposes of the rural subsidy.<sup>38</sup> Low income subscribers should obtain the same functional access that is made generally available within the region where the subscriber lives.

Universal service funding should not be burdened with subsidies for services that go beyond those made generally available to all subscribers. The *Notice* lists several examples of possible additional services, including free toll blocking, reduced service deposits, low-income long distance plans and special services for homeless or highly mobile subscribers. None of these services should be added to the universal support mechanism. These services would add unknown costs to universal service with unproven results. As the Commission notes, many persons currently without telephone service once had been subscribers. Most of

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<sup>38</sup> *Notice*, ¶ 50.

these persons are now off the network either by choice<sup>39</sup> or because they were unwilling or unable to control their usage of the network.<sup>40</sup> These former users should not be subsidized by those subscribers who choose to subscribe and to pay for their usage.

Furthermore, none of the services identified in the *Notice* meet the criteria established by Section 254(c)(1) for inclusion in the definition of universal service. Toll blocking and special low-income long distance plans are not services used by a substantial majority of residential subscribers today.<sup>41</sup> Waivers of the service deposit for subscribers — particularly those that have already been disconnected on a prior occasion — is inconsistent with the public interest.<sup>42</sup> In states that currently waive service deposits for Link Up subscribers, for example, customers receiving the assistance are much more likely to fail to pay long distance charges.<sup>43</sup> Thus, these are customers for whom service deposits are most needed,

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<sup>39</sup> See *Addressing Universal Service Issues*, at 18-19 (citing studies); see also *Economic Necessity*, 48 Admin. L. Rev. at 244 (citing survey in which 45 percent of former subscribers stated that they disconnected service voluntarily). These studies indicate that many non-subscribers make a conscious decision to purchase other discretionary services, such as cable television, instead of telephone service. *Addressing Universal Service Issues*, at 19. Universal service support should not be used to subsidize the choice of a subscriber who prefers other services to telephone service.

<sup>40</sup> *Addressing Universal Service Issues*, at 17. A policy barring LECs from disconnecting local service for nonpayment of toll charges (DNP) would only exacerbate the problem of uncollectible toll charges. See Bell Atlantic Comments at 4, CC Docket No. 95-115 (Sept. 27, 1995) (reporting a 400% increase in uncollectibles after Pennsylvania prohibited DNP). DNP is an effective tool in encouraging subscribers to pay their toll charges and discourage IXC-hopping. Without this tool, subscribers could run up large toll bills, refuse to pay them, and then switch to a different (unsuspecting) long distance carrier to obtain future service when the customer's original carrier refuses to continue providing service.

<sup>41</sup> See 47 U.S.C. § 254(c)(1)(B).

<sup>42</sup> *Id.* § 254(c)(1)(D).

<sup>43</sup> Makarewicz, *The Effectiveness of Low-Income Telephone Assistance Programmes: Southwestern Bell's Experience*, 15 Telecomm. Policy 223 (1991).

and waiver of the deposit would only expose telecommunications service providers to a greater risk of uncollectible revenues. Ultimately, these uncollectibles would be recovered from paying subscribers, in the form of higher base rates.

#### **B. When Support Is Needed and How To Determine How Much Support Is Necessary**

Because low-income support targets individual subscribers, the need for support will depend upon the subscriber's means. That is, the need for universal service support arises when a subscriber's income is below a specified level at which telephone services are "affordable." The amount needed to meet universal service goals, in turn, depends upon the number of subscribers below this level and the price at which service becomes affordable again.

Importantly, both the income level for eligibility and the amount of support must be determined with reference to the rate at which the core services are generally available in the subscriber's region and average income levels in the area. CompTel supports continuing to use the Lifeline and Link Up programs, which already are means-tested, to define the scope of the subsidy needed for universal service support. The Lifeline and Link Up programs target the class of subscribers most in need, address their needs directly, and provide assistance that is sufficient to encourage subscribership among lower income households. As a recent Commission review of current support mechanisms concluded, Lifeline and Link Up are "well-targeted, effective methods of expanding universal service" for low-income subscribers.<sup>44</sup> They should continue as the support mechanisms for promoting universal service to low-income households.

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<sup>44</sup> See *Addressing Universal Service Issues*, at 41.

### **C. How To Collect and Distribute Funds To Provide Support**

Lifeline and Link Up cannot continue to be funded using current mechanisms, however. Both Lifeline and Link Up are funded solely by interexchange carriers today. In order to satisfy the 1996 Act, these programs should be modified to collect funds from all telecommunications providers on equitable and nondiscriminatory terms. As with the rural support program, this is best achieved through a surcharge on the net revenues or retail revenues of all telecommunications providers.<sup>45</sup>

Distribution of the funds also should be nondiscriminatory. Lifeline or Link Up subscribers should be able to use the assistance they receive to obtain service from the telecommunications service provider of their choice. Thus, the existing programs should be changed to expand eligibility to allow any service provider to offer the subsidized services to these subscribers.

### **CONCLUSION**

For the foregoing reasons, the Joint Board should act promptly to develop universal service policies consistent with the 1996 Act's goals. Any support mechanisms must be targeted to providing support for specific services, must be explicit and predictable, and must treat all telecommunications service providers in an equitable and nondiscriminatory manner. The Board should recommend immediate termination of implicit and unequal support mechanisms currently in place, and should replace them with explicit programs designed to further specific universal service goals while also promoting the development of local services competition.

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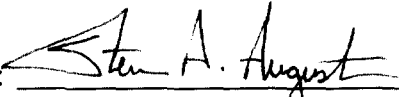
<sup>45</sup> See *supra*, pp. 15-16.



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April 12, 1996